



May 8, 2000

Mr. Dick Hall
Schwartz & Eichelbaum, P.C.
700 N. St. Mary's, Suite 1850
San Antonio, Texas 78205

OR2000-1777

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134870.

The Lindsay Independent School District (the "district"), which you represent, received a request for information pertaining to two district employees. Although you state that most of the requested information has been released, you claim that portions of the submitted documents, labeled Exhibits B and C, are excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Initially, you assert that some of the information contained in the submitted exhibits must be withheld pursuant to sections 552.026 and 552.114 of the Government Code, and pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." It appears that, pursuant to FERPA, the district has redacted student names and other identifying information from the exhibits prior to submitting these documents to this office. Therefore, we need not address your assertions under sections 552.026 and 552.114.

You also assert that Exhibit B contains classroom observations and appraisals of a school teacher and, as such, this information is confidential pursuant to section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section

encompasses information protected by other statutes. Section 21.355 provides that, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). The documents at issue consist of a principal's personal account of his work relationship with two of the district's teachers. We do not believe that this is the type of information made confidential by section 21.355. Therefore, the district may not withhold any of the submitted information under section 552.101 in conjunction with section 21.355 of the Education Code.

You also contend that a portion of Exhibit C is confidential under section 552.101 in conjunction with provisions of the Open Meetings Act because it describes events which took place in a closed session of the Board of Trustees. We note that while the certified agenda or tape recording of a properly held closed meeting is confidential, information is not made confidential by the mere fact that it was discussed in a closed meeting. Open Records Decision Nos. 605 at 2-3 (1992) (mere fact that information was discussed in executive session does not make it confidential under Public Information Act), 485 (1987) (investigative report *orally* submitted by private detective to junior college district board may not be withheld merely because its contents were considered in executive session of board). Consequently, you may not withhold any of the submitted information under section 552.101 in conjunction with the Open Meetings Act.

Finally, you argue that portions of the submitted documents are protected from disclosure by the common law right to privacy. Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668.

As previously noted, the submitted documents relate *solely* to the work behavior and job performance of the district's employees. Since there is a legitimate public interest in the work behavior of public employees and the conditions for their continued employment, the district may not withhold any of the submitted information from public disclosure based on the common law right to privacy. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Consequently, with the exception of the information protected by FERPA, Exhibits B and C must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

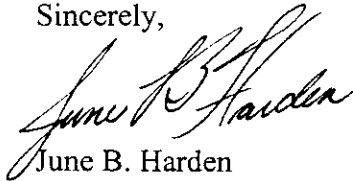
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 134870

Encl. Submitted documents

cc: Mr. Tony Conners
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(w/o enclosures)